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16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 No. CR 18-345-JFW

21 Plaintiff,

22 GOVERNMENT'S THIRD SUPPLEMENTAL
POSITION RE: SENTENCING

23 v.

24 JOHN SARO BALIAN,

25 SENTENCING DATE: 3/8/2019

26 Defendant.

27 Plaintiff United States of America, by and through its counsel
28 of record, the United States Attorney for the Central District of
California and Assistant United States Attorney Jeff Mitchell, hereby
files its third supplemental sentencing position relating to
defendant John BALIAN.

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The government's third supplemental position regarding sentencing is based upon the attached memorandum of points and authorities, the files and records in this case, the Presentence Report, and any other evidence or argument that the Court may wish to consider at the time of sentencing.

Dated: March 7, 2019

Respectfully submitted,

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/s/ Jeff Mitchell
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On February 25, 2019, the government submitted its sentencing position and argued for a two-level enhancement for an Abuse of Position of Trust, pursuant to USSG § 3B1.3. (Dkt. No. 90.)

On March 7, 2019, the Court issued a minute order ordering the government to file a supplemental brief addressing the applicability of the abuse of trust enhancement for offenses calculated under § 2C1.1, and to address Application Note 6.

II. ARGUMENT

Count One of the Information charges defendant with Bribery, in violation of 18 U.S.C. § 666. Bribery offenses are examined under Section 2C1.1 of the Sentencing Guidelines. Application Note 6 to § 2C1.1 states that district courts should "not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill)" enhancements when calculating the Guidelines for bribery offenses.

If the Court were to apply the § 3B1.3 enhancement for an Abuse of Position of Trust it would constitute impermissible double counting, because inherent to all bribery offenses is an element of an abuse of trust. See United States v. Ford, 21 F.3d 759, 765 (7th Cir. 1994) (noting that "every act of public bribery inherently entails an abuse of public trust"). It is for these reasons that the Guidelines do not typically permit an additional enhancement under § 3B1.3 for an Abuse of Position of Trust.¹

¹ Prior versions of the Sentencing Guidelines permitted § 3B1.3 enhancements if the offense level was calculated using the Bribery cross-referenced subparagraphs in § 2C1.1(c), but 2004 version of the Guidelines eliminated the enhancement for all offenses calculated under § 2C1.1.

1 **III. SENTENCING GUIDELINES**

2 The government submits that the Sentencing Guidelines should be
3 calculated as followed:

4	Leading Base Offense (Count One)	14
5	Value of Bribe	+2
6	Multiple Count Adjustment	+2
7	Acceptance of Responsibility	-3

8 **IV. CONCLUSION**

9 For the foregoing reasons, the government respectfully requests
10 that the Court impose a sentence at the high-end of the Sentencing
11 Guidelines, followed by three years' of supervised release, a
12 special assessment of \$300, and a fine of \$95,000.

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